

**REMARKS**

This patent application presently includes claims 1-35, all of which stand rejected as anticipated by Elliott U.S. Patent No. 6,614,781. Typographical errors in the description are corrected, and all rejections are respectfully traversed.

Claims 1-35 were rejected as anticipated by Elliott et al. U.S. Patent No. 6,614,781. This rejection is respectfully traversed. Elliott does not teach or suggest the invention of these claims.

Elliott discloses a voice over data telecommunications network architecture. Referring to the high-level block diagram of Fig. 1, it can be seen that the network includes the calling parties 102, 122 and the called parties 120, 124. Calling party 102 and called party 120 are off-network, in that they are connected to the gateways 108, 110 via the Public Switch Telephone Network (PSTN), while calling party 122 and 124 are on-network, in that they connect to gateways 108, 110 as direct customers (Col 18, Ins. 26-31). In other words, only parties 102 and 120 utilize out of band telephone signals. Moreover, as maybe seen in Fig. 1, parties 102 and 120 are connected through respective carrier facilities to the signaling network 114. In other words, their signaling does not pass through the gateways 108, 110, but is handled by the separate network 114. This is confirmed in col. 18, lines. 53-57.

In rejecting claim 1, the examiner asserts that Elliott's gateway 110 conveys a telephone call to a packet switched data network to a second gateway 108. It is believed that he has, in fact, reversed 108 and 110. The examiner asserts that the gateway has a first interface e.g. 402 for receiving out of band telephone signals from a network and a second interface e.g. 406 for transmitting out of band telephonic signals over the data network. However, interface 402 is between SS7 gateways 208, 210 and a soft switch 204 at the soft switch site 104, 106 (see Fig. 2A-1). It is not between gateway 108 (or 110) and a telephone network, such as carrier facility 126. Clearly, gateway 108 and the soft switches are indicated at different sites. Thus, the element that the examiner has identified as the gateway does not include the interface.

Turning specifically to the language of claim 1, the gateway has a first interface for receiving out of

band telephone signals from a telephone network. As explained above, gateway 108 includes no such interface since those signals are redirected around it to signaling network 114. The gateway also has a second interface for transmitting out of band telephony signals of the data network to a second gateway. Gateway 108 has no such interface. Claim 1 therefore distinguishes patentability over Elliott and should be allowed.

Claims 2-3 depend from claim 1 and are allowable based upon their dependence from an allowable claim.

As far as claim 4 is concerned, it includes the steps of transmitting out of band telephony signals from a first gateway to a second gateway over a packet switch data network, at least some of said out of band data signals also being transmitted from a switch in a telephone network is said first gateway. As explained above, out of band telephony signals in Elliott are directed between carrier facilities through a signaling network 114, or they may be transmitted through the data network 12 between the soft switches 104, 106. However, the transmissions to the carrier facilities 126, 130 are always from the signaling network 114. In other words, the out of band telephony signals, even if they go through the data network, bypass the gates 108, 110 and never pass through them. Claim 5 could therefore not possibly read on Elliott. Claim 4 is therefore allowable and claim 4 is also allowable based upon its dependence from claim 4.

Regarding claim 7, the examiner rejected it on the same basis as claim 1, asserting that “software” in the claim reads on soft switch (204). This is decidedly not the case.

According to claim 7, the gateway comprises software. Moreover, the examiner equates the gateway with gateway sites 108, 110. The soft switches are actually designated as soft switch sites. Therefore they are not the same as the gateway site. In other words, the gateway does not comprise the soft switch. Furthermore, Wikipedia defines a “softswitch” as a central device in a telephone network which connects calls from one phone line to another, entirely by means of software running on a computer system.” This is not the type of function performed by a gateway. The function of the software in the claim is to “ascertain whether a potential terminating gateway has out of band telephony signaling capability or not” or to “communicate with said

potential terminating gateway using such out of band telephony signaling if the gateway has said capability.” This is not a type of functionality found in a soft switch. According to Wikipedia “a softswitch, is typically used to control connections at the junction point between circuit and packet networks. Clearly, that is precisely what soft switches 104 and 106 in Elliott are doing.

Accordingly, the rejection of claim 7 has no foundation and does not make sense either technically or logically. Claim 7 is therefore allowable. Claims 8 and 9 depend from claim 7 and are allowable based upon their dependence from an allowable claim.

As for claim 10, the method includes, at a first interface, using an out of band protocol between said originating gateway and the telephony network from which a call arrives and implementing said out of band signaling at a second interface between said originating gateway and a computer connected to said packet switched data network. Again, the gateway has an interface with out of band protocol to a telephony network. As indicated above, Elliott has no such interface for the gateway, because all out of band protocol is directed around the gateways, not through them. Furthermore, the gateway in the claim has a second interface which implements out of band signaling with a computer on the packet switched data network. The gateways in Elliott have no such interfaces – they do not implement out of band signaling. Furthermore, the method of claim 10 implements call set up to establish a telephone call, and the second interface mentioned immediately above facilitates that call set up. There is no disclosure of such call set up in Elliott. Claim 10 is therefore allowable. Claims 11-16 depend from claim 10 and are allowable based upon that dependency.

Regarding independent claim 17, the gateway has an out of band telephony signaling interface to the telephony network and software for determining whether to communicate with potential terminating gateway via an out of band telephony signaling network or via said packet switched data network. As explained above, the gateways in Elliott do not have an out of band telephony signaling interface to a telephony network. On the contrary, all out of band signaling is routed around the gateways and never enters them. The gateways therefore could not make the determination made by the software in claim 17, and such software would not be present in

Elliott's gateways. In fact, Elliott teaches away from such a feature. Claim 17 is therefore allowable. Claims 18-21 depend from claim 17 and are also allowable.

In its simplest sense, claim 22 relates to a method for setting up a call between an originating telephony network and a receiving telephone network which are interconnected by a packet switched data network. The method contemplates setting up the connection in the two telephony networks using out of band signaling before call set up is implemented in the packet switched data network using a separate call signaling protocol.

This is a concept which is not even hinted at in Elliott. Although the out of band signaling in Elliott could go between carrier facilities 126 and 130 through signaling network 114 or through the data network 112 via soft switches 104, 106, this would be conventional out of band signaling, even if the signaling were coded for digital. That is, any signaling going through the data network 112 would simply be the equivalent of signaling going through signaling network 114. Nothing else is disclosed. Moreover, there is not the slightest suggestion that call set up in the two telephony networks be carried out before any signaling is sent through the data network. There is also not the slightest suggestion that call set up be implemented in the data network only after information is received on resource status in the receiving telephony network. Claim 22 therefore distinguishes patentably over Elliott. Claim 22 should be allowed.

Claims 23-35 depend from claim 22, either directly or indirectly, and are allowable based upon their dependence from an allowable claim.

Applicant's attorney has made every effort to place this patent application in condition for allowance. It is therefore earnestly requested that this patent application, as a whole, receive favorably reconsideration and that all of the claims be allowed in their current form. Should there be any unanswered questions, the examiner is requested to call the applicants undersigned attorney at the telephone number indicated below.

This amendment incorporates a petition for a 3 month extension of time and is accompanied by the requisite fee. Should it be determined that any additional fees are due with this amendment (or that any refunds are due), the commission is authorized to charge such fees, (or credit any refunds) to deposit account No.

11-0223.

Respectfully submitted,

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